# SUPREME COURT OF THE UNITED STATES.

Nos. 158 and 187.—October Term, 1920.

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| 158 | Silver King Coalition Mines Company, Petitioner, *vs.* Conkling Mining Company. | On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit. |
| 187 | Silver King Coalition Mines Company, Appellant, *vs.* Conkling Mining Company. | Appeal from the United States Circuit Court of Appeals for the Eighth Circuit. |

[February 28, 1921.]

Mr. Justice Holmes delivered the opinion of the Court.

This is a bill in equity brought by the respondent, the Conkling Mining Company, in order to establish its right to a large body of ore found under the southwesterly 135.5 feet of its patent as laid out by courses and distances, and to obtain an account from the petitioner, which has mined the ore, making a claim of right on its side. The District Court dismissed the bill. The decree was reversed by the Circuit Court of Appeals. 230 Fed. Rep 553. Thereupon a writ of certiorari was granted by this Court. 250 U. S. 655. A short statement will be enough to present the single issue that it is necessary to pass upon here. The only ground upon which the Conkling Mining Company stands is that the ore is within the lines of its patent extended vertically downward. If the patent properly construed does not cover the land in question the case is at an end.

The patent under which the Conkling Mining Company gets its title was granted to the Boss Mining Company and so far as material is as follows: It recites that in pursuance of the Revised Statutes, &c., there have been deposited in the General Land Office of the United States the plat and field notes of survey and the Certificate No. 1697 of the Register of the local land office with

other evidence whereby it appears that the grantee duly entered and paid for that certain mining claim known as the Conkling lode mining claim, designated by the Surveyor General as Lot No. 689, "bounded, described, and platted as follows . . . Beginning at corner No. 1 a pine post four inches square marked U. S. 689 P. 1. Thence" by courses and distances northwesterly "to corner No. 2, a pine post four inches square marked U. S. 689 P. 2", these two corners being undisputed. "Thence second course, south sixty degrees and forty-five minutes west one thousand five hundred feet to corner No. 3. Thence third course, south twenty-one degrees and nine minutes east six hundred feet to corner No. 4." It then grants "the said mining premises hereinbefore described" and all that portion of veins, lodes or ledges, "the tops or apexes of which lie inside of the surface boundary lines of said granted premises in said Lot No. 689" &c., with a proviso confining "the right of possession to such outside parts of said veins," etc., "to such portions thereof as lie between vertical planes drawn downward through the end lines of said Lot No. 689," &c.

If 'corner No. 3' and 'corner No. 4' are determined by courses and distances alone the Conkling Mining Company is entitled to prevail upon the question that we are discussing. The Circuit Court of Appeals was of opinion that the patent represented an adjudication by the Land Department that the lot was 1500 feet long and 600 feet wide without regard to the location of the other posts which the field notes showed to exist but the patent did not mention. The District Court on the other hand held that evidence was admissible to show that there were monuments at corners No. 3 and No. 4, held that the monuments so established prevailed, and therefore decided that the title of the Conkling Mining Company failed.

The decree of the District Court appears to us to be supported by the face of the patent and by consideration of the circumstances. If a draughtsman were determining his description by courses and distances only it seems unlikely that he would insert 'corner No. 3' and 'corner No. 4' where the direction changed, as it would add nothing to the change of direction in the boundary line. The words by themselves suggest a reference to an external object, an interpretation greatly strengthened by the fact that the

same phrase in the first two instances of its use referred to one in terms; and coupled with evidence that such an external object was found, the words at least tend to prove that a monument was meant. Of course evidence is admissible, if needed, to show that language is to receive the interpretation that taken by itself it invites. Furthermore the grant is of 'the said mining premises hereinbefore described', assumed in the same sentence to be the lot designated by the Surveyor General as Lot No. 689; and, when it is observed that it is the duty of the Surveyor General to see that the lot is identified by monuments on the ground the presumption becomes almost irresistible that 'corner No. 3' and 'corner No. 4' mean corners determined as they are required to be determined by the law.

One statutory foundation of a mining claim is that "the location must be distinctly marked on the ground so that its boundaries can be readily traced." Rev. Sts. § 2324. To obtain a patent the claimant must file in the proper land office along with his application "a plat and field notes of the claim . . . made by or under the direction of the United States Surveyor General, showing accurately the boundaries of the claim . . which shall be distinctly marked by monuments on the ground." (*Waskey* v. *Hammer*, 223 U. S. 85, 92.) He also must file a certificate of the Surveyor General "that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description, to be incorporated in the patent." Rev. Sts. § 2325. It is the reference to natural objects or monuments that is to be incorporated. Before the application is filed notice of it must be posted on the ground. The register subsequently advertises the application in a newspaper, &c., and if no adverse claim is made and the other conditions are complied with the patent is granted. The notice is jurisdictional. *El Paso Brick Co.* v. *McKnight*, 233 U. S. 250, 259. Obviously therefore a patent can convey only the claim as to which notice has been given. A notice of an application for a patent of land determined by monuments cannot give priority to a junior location, such as was that of the Conkling Mining Company, in respect of land outside the monuments, to which adjoining claimants had no notice that the patent would purport to extend.

The final receipt from the local land officer fixed the claimant's rights. *El Paso Brick Co.* v. *McKnight*, 233 U. S. 250, 257. The failure of the subsequent patent to the Boss Mining Company, issued February 23, 1892, to describe the monuments at corners Nos. 3 and 4 was not an adjudication in favor of an inconsistent description but simply the following of a practice of abbreviating by omission that had been adopted by the land office in 1891, and which a few years later it was directed to discard. The Act of April 28, 1904, c. 1796, 33 Stat. 545, amending Rev. Sts. § 2327, making the monuments the highest authority to which inconsistent descriptions must give way, simply made more explicit or at most carried a little farther the previous policy of the law. We are satisfied that evidence that the field notes, as the regulations of the department required, showed marked posts at the third and fourth corners was admissible, and that witnesses properly were allowed to testify that they found posts upon the ground. The District Judge who saw and heard the witnesses was satisfied that they told the truth and thereupon rightly determined that the monuments so fixed controlled the courses and distances in the instrument evidencing the grant. See *Resurrection Gold Min. Co.* v. *Fortune Gold Min. Co.*, 129 Fed. Rep. 668; *Grand Central Mining Co.* v. *Mammoth Mining Co.*, 36 Utah 364, 378, 379; *Foss* v. *Johnstone*, 158 Cal. 119, 128; *McIver* v. *Walker*, 4 Wheat. 444, 447, 448; *Heath* v. *Wallace*, 138 U. S. 573. We see no sufficient reason for disturbing the finding of the trial court upon the facts.

It may be that our decision will end this litigation. If not, our decree is made without prejudice to such further questions as may arise. We confine ourselves to the one here determined.

The petitioner besides applying for the writ of certiorari took an appeal, for greater caution. It is immaterial to the petitioner in which way the relief to which it is entitled is obtained. The appeal will be dismissed.

*Decree reversed.*
*Appeal dismissed.*

The CHIEF JUSTICE took no part in the decision of this case.

A true copy.

Test:

*Clerk Supreme Court, U. S.*

# SUPREME COURT OF THE UNITED STATES.

No. 158.—October Term, 1920.

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| Silver King Coalition Mines Company, Petitioner, *vs.* Conkling Mining Company. | On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit. |

On Petition for Rehearing.

[April 11, 1921.]

Mr. Justice Holmes delivered the opinion of the Court.

This is a suit brought by the respondent to establish its right to a large body of ore found within the lines of the respondent's patent as it construed that document. The main contest concerned the southwesterly 135.5 feet of the patent as laid out by courses and distances, from which was taken the main body of the ore. At the argument the petitioner's statement was that 'practically all the ore in controversy was taken from within this 135.5 foot strip'. The decision with regard to that strip was in favor of the petitioner and as it seemed possible that the respondent would not be able to establish that any appreciable amount of ore was taken from the land belonging to it, and that it might not care to attempt the proof, the questions raised with regard to such ore if any were left undecided according to the usual practice. But the respondent points out that the petitioner has admitted that a small amount of ore, not exceeding $20,047.50 in value, did come from the respondent's land and presses for a decision concerning its right to that. The motion is put in the form of a petition for rehearing; but the main thing asked and the only thing for which we see any reason is that we decide the questions argued, but left open by us. That we proceed to do. Nothing that has been decided will be reopened, but leave to file the petition is granted to that single end.

It is not disputed by the respondent, the Conkling Mining Company, that a fissure on its strike crosses the parallel side lines of

the petitioner's claims and on its dip passes beneath the Conkling mining claim in the immediate vicinity of the ore body in dispute and between vertical planes drawn through the parallel side lines of the petitioner's claims and continued in their own direction. What is disputed is that this ore body is any part of the vein referred to, known as the Crescent Fissure, and that, if it is, the petitioner has any right to treat the end lines of its claims as side lines and to pursue the vein under ground beyond the vertical planes drawn through those lines.

We take up the last question first. The typical case supposed by Rev. Sts. § 2322 is that of a claim laid out lengthwise along the strike of a vein. In that case the end lines of the location will limit the extralateral right. But that case is only the simplest illustration of a principle. The general purpose is to give a right to all of the vein included in the surface lines, if there is only one, provided the apex is within the location. It often must happen that the strike of the vein is not known but must be conjectured at the time of discovery, and that the location is across instead of along the vein. This has been obvious always and therefore it would be wrong to interpret the words 'end lines' narrowly, as meaning the shorter ones in every instance. Those are the end lines that cut across the strike of the vein if it crosses the location. We see no sufficient reason for thinking that because the discoverer has not claimed as long a portion of the strike as he might have, he should be deprived of even his diminished lateral rights. It has been the accepted opinion of this Court for many years that where as here the strike of the vein crosses the location at right angles its dip may be followed extralaterally, whatever the direction in which the length of the location may run. If across the strike as here, the side lines, as it commonly is expressed, become the end lines. Subsequent locators know as well as the original ones that the determining fact is the direction of the strike not the first discoverer's guess. *Flagstaff Silver Mining Co.* v. *Tarbet*, 98 U. S. 463. *King* v. *Amy & Silversmith Consolidated Mining Co.*, 152 U. S. 222, 228. *Del Monte Mining & Milling Co.* v. *Last Chance Mining & Milling Co.*, 171 U. S. 55, 90, 91. *Jim Butler Tonopah Mining Co.* v. *West End Consolidated Mining Co.*, 247 U. S. 450, 453.

But it is said that when the end lines are determined they are end lines for all purposes even if there are different veins running in different directions having their apexes within the claim. *Walrath & Champion Mining Co.*, 171 U. S. 293. And it is argued that there is a presumption that has not been overcome that there was a discovery vein running parallel with the side lines; that this determined the end lines and that therefore the petitioner got no extralateral rights in the Crescent Fissure. The Circuit Court of Appeals, approaching the petitioner's claim as a claim of an exceptional privilege, seems to have attached a weightier burden of proof to it than we are disposed to do. They were not satisfied that the discovery vein which determined what the end lines should be was not some other vein than the Crescent Fissure. But we see no substantial evidence that there was another vein. We have the distinct testimony of experts that there was no such and we agree with the view of the District Judge sustaining the petitioner's extralateral rights. Whether there are other answers to the contention we need not decide. See *Jim Butler Tonopah Mining Co.* v. *West End Consolidated Mining Co.*, 247 U. S. 450, 454, *et seq.*

It is urged that if the end lines be taken as the side lines then the discovery shafts being four hundred feet distant from the apex of the Crescent Fissure left either the vein or the discovery outside the location with the side lines limited as they should be. But at that time there was no requirement making a discovery shaft essential to a valid location. And in any event our conclusion being that the petitioner must be presumed to have discovered the Crescent Fissure, however it may have been done, the distance of the shafts does not affect the case.

The only question that remains is whether the ore within the respondent's lines formed part of the Crescent Fissure vein. The Circuit Court of Appeals in view of its opinion upon the last point made no decision upon this. But the experienced District Judge after careful consideration was of the opinion that the ore belonged to the vein. We see nothing to convince us that he was wrong. The position of the respondent is that the ore in controversy is a distinct bedded deposit. But as the District Judge remarks, similar deposits are found at many different horizons, connected with the fissure and similar in composition to the ore in the fissure. The deposit in question was like the others. Whether we consider

merely the practical fact of the continuously occurring deposits along the course of the vein or the theory of their origin which seems to us the most probable, we believe the District Judge to have been right.

*Decree of Circuit Court of Appeals reversed.*

*Decree of District Court affirmed.*

A true copy.

Test:

*Clerk Supreme Court, U. S.*